

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

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4 United States of America,) CR 10-159 (DWF/FLN)
5)
6 Plaintiff,) CRIMINAL JURY TRIAL
7) OPENING STATEMENT BY
8 -v-) THE PROSECUTION
9)
10 Barry Vincent Ardolf,) December 15, 2010
11) 3:00 o'clock, p.m.
12 Defendant.) St. Paul, Minnesota
13 -----

14 BEFORE THE HONORABLE JUDGE DONOVAN W. FRANK

15 UNITED STATES DISTRICT COURT JUDGE

16 CRIMINAL JURY TRIAL PROCEEDINGS

17 OPENING STATEMENT BY THE PROSECUTION

18 EXCERPT OF VOLUME I

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(Defendant present.)

1 (In open court; jury present.)

2 THE COURT: It is now the opportunity of Mr.
3 Rank on behalf of the United States to present his
4 opening remarks. So, I will call upon Mr. Rank at this
5 time.

6 MR. RANK: Thank you, Your Honor. Your
7 Honor, I don't know if there is a medium light situation
8 and we can be able to see the screen a little bit better
9 than that? Good. Thank you.

10 THE COURT: I just want to remind the jury.
11 You heard me say this during jury selection. I have
12 certain computer-generated light settings. It is not to
13 generate mood in here. And more importantly, in all
14 seriousness, it is not to emphasize any particular part
15 of a trial or an exhibit. Sometimes I will be asked by
16 one of the lawyers to do it, because unlike yourselves,
17 each of the attorneys at the tables, and myself, in
18 addition to this screen, we have a monitor. And anybody
19 in the audience or the spectator group has a plasma
20 screen.

21 The sole purpose, and sometimes I will often
22 do it on my own, and that is why we have tried to
23 generate certain settings to emphasize the screen, is
24 for your benefit, without me trying to emphasize a
25 particular thing, because I will oftentimes do it on my

1 own accord. And we have tried to adjust the lighting,
2 so the lighting stays and remains on each counsel table
3 and on you, to an extent, and of course the Court. So,
4 you may proceed.

5 MR. RANK: Thank you, Your Honor. Good
6 afternoon. May it please the Court? Counsel? Ladies
7 and gentlemen of the jury?

8 As the Judge told you, my name is Tim Rank.
9 I am an Assistant United States Attorney. And along
10 with Assistant United States Attorney Laura Provinzino
11 and FBI Special Agents Robert Cameron and Dennis Howe,
12 we represent the United States in this criminal case.

13 So, why are we here? As Judge Frank told
14 you, the Defendant Barry Ardolf has been charged by
15 indictment. You are going to see a copy of the
16 indictment at some point in time in this case, but I
17 will show you the front page of it.

18 In an indictment, the United States Grand
19 Jury has charged Mr. Ardolf with felony charges of
20 unauthorized access to a protected computer. Aggravated
21 identity theft, possession of child pornography,
22 transmission of child pornography, and threats, death
23 threats to the Vice-President of the United States.
24 Those are the charges.

25 What is the case really about? This case is

1 really about the Defendant Barry Ardolf waging a
2 campaign to terrorize his neighbors, to destroy their
3 careers and their marriage, and to do what he could to
4 destroy their lives.

5 Now, Judge Frank read a summary of the
6 indictment to you earlier. And again, you will see the
7 indictment at the end of this case. And you are going
8 to see in the indictment there are a couple of people
9 that are described in the indictment as Victim A and
10 Victim B. And that is how they are framed in the
11 indictment. And you will learn that both of these
12 people, Victim A and Victim B, they are real people.
13 And you will hear them testify at trial.

14 I want to talk to you about, first of all,
15 the person identified in the indictment as Victim A.
16 Victim A is Matt Kostolnik, the neighbor of Barry
17 Ardolf. You will hear him testify. As you will hear
18 him testify, he does not like to be referred to as a
19 victim.

20 But, as the evidence will show in this case
21 and as you will learn at trial, the reason we are here
22 is because Barry Ardolf sought to victimize Matt
23 Kostolnik and Matt Kostolnik's family. And how did he
24 do that? What happened?

25 Before we get to the details of the

1 Defendant's crimes and what he did, the "what" of what
2 he did, it is important to learn the "why." Why would
3 this Defendant work so hard, put so much effort into
4 trying to harm his neighbor's life? To answer that
5 question we have to go back to the summer of 2008 when
6 Matt Kostolnik and his wife Bethany Kostolnik bought a
7 new home. They had two boys under the age of five.
8 They had a 4-year-old and an 18-month-old, and Bethany
9 was several months pregnant with their third child.

10 They were looking to move to a different
11 house. They wanted a house where they could raise their
12 family. And they wanted a house in a neighborhood with
13 lots of kids, quiet neighborhood with adjoining yards
14 where the kids could have friends and they could run
15 from yard to yard playing. A house on a quiet
16 cul-de-sac is what they were looking for. And they
17 looked at a lot of places. They finally found in the
18 summer of 2008 what they believed to be was their dream
19 home. It was a home on Xxxxx Xxxxx in Blaine,
20 Minnesota. I am showing and you an aerial photograph of
21 the neighborhood of Xxxxx Xxxxx.

22 You can see a little cul-de-sac area. And if
23 I click that you can see there is an arrow that points
24 at the house that Matt and Bethany Kostolnik bought in
25 the summer of 2008 on what they thought was a quiet

1 cul-de-sac. So, they moved into this house in August of
2 2008. And on August 2nd of 2008, the day that they were
3 moving in, unpacking boxes, the evening of that day,
4 Matt Kostolnik was upstairs in one of the rooms
5 unpacking boxes, and Bethany Kostolnik was downstairs
6 watching the two boys.

7 Their 4-year-old, Wxxxxxx, was in the front
8 yard of the house. If I blow this up, it is a little
9 bit closer view of the house. The Kostolniks' residence
10 is the house at the bottom. And Wxxxxxx was running
11 around in the front yard. And Bethany saw Wxxxxxx run
12 over to the neighbor's yard. And you can see the
13 neighbor's yard right there. And he was attracted by
14 what you can see the arrow pointing to there, which is a
15 playset in the back yard. Bethany saw Wxxxxxx run into
16 the yard. She called for him to come back. He didn't
17 come back, he is four. And she walked closer to the
18 neighbor's yard, but at the same time she was trying to
19 get Wxxxxxx back from the neighbor's yard their
20 18-month-old was standing in the doorway. And she was
21 trying at the same time to keep him in the doorway as
22 bringing the four-year-old back into the yard.

23 She eventually walked over towards the
24 neighbor's yard. And as she was walking over, a man
25 came down from, you can see the deck area there on the

1 neighbor's yard, and he walked down to the area where
2 Wxxxxxxx was by the playset.

3 And when he went down there, he didn't
4 address Bethany, who was on her way over there, didn't
5 make eye contact with her, but instead went straight
6 over to Wxxxxxxx.

7 He called out to Wxxxxxxx: Bet you can't
8 touch me. And then tried to get the child to chase
9 after him. Eventually he picked the child up and walked
10 him back over towards the front door of the Kostolniks'
11 house which is shown there by the arrow.

12 Now, at that point in time, Bethany Kostolnik
13 grabbed her 18-month-old and brought him inside of the
14 house. And as she was putting her 18-month old in the
15 house, she turned her back to the man who had Wxxxxxxx in
16 his arms. And when her back was turned, she heard the
17 man kiss Wxxxxxxx, an audible kiss, something that she
18 describes as a wet kiss.

19 Bethany was taken aback by it. She turned
20 around and she grabbed Wxxxxxxx from the man's arms. She
21 got in the house. She closed the door. She went
22 upstairs and got the two kids situated in another room
23 and then she went into the room that Matt was unpacking
24 boxes in, sat down on the bed and began to sob. She was
25 so unnerved by this encounter, by the man's focus on the

1 child, running away from him and saying: Bet you can't
2 touch me. And ultimately, the wet kiss.

3 She sat down, and she told her husband the
4 story while crying. She said: Who have we moved next
5 door to? And even though they had just bought this
6 house, the house they thought was the house of their
7 dreams, she told them that they should move. They just
8 moved in, but she wanted to move. They didn't know what
9 to do.

10 And the next day after this incident,
11 Wxxxxxxx, unsolicited, told Bethany that the man had
12 kissed him on the lips. And at that point in time Matt
13 Kostolnik decided he was going to go over and ask the
14 man what had happened. So, he went over and asked the
15 man what happened in the incident with Wxxxxxxx.

16 The man grudgingly told him a little bit
17 about what had happened, a little bit at a time,
18 everything but the kiss. And finally, when Matt
19 Kostolnik pressed the man, he admitted he kissed him
20 good-bye. And when Matt said where, he pointed to his
21 mouth.

22 Now, again, Matt and Bethany didn't know what
23 to do, Matt went and talked to his father. And after
24 talking to his father, he decided to report the incident
25 to the police. So, he called the Blaine Police

1 Department. An officer came out to the Kostolniks'
2 residence and took a police report. The officer also
3 went next door to speak with the man. And as you will
4 learn at trial, the man who lived in that house was the
5 Defendant Barry Ardolf.

6 And ladies and gentlemen, it was apparently
7 this incident, and particularly the fact that Matt
8 Kostolnik reported the incident to the police, that
9 motivated the Defendant to begin what can only be
10 described as a methodical campaign to terrorize the
11 Kostolniks. For the Kostolnik family, they went from
12 the excitement of thinking that they had moved into the
13 home of their dreams, to the nightmare of being targeted
14 by the Defendant.

15 So, how was it that Barry Ardolf targeted,
16 harassed, the Kostolnik family? What did he do? First
17 of all I need to back-up, you have to understand that
18 Barry Ardolf is a computer enthusiast. He worked as a
19 computer repair technician for hardware devices used in
20 the medical industry. And more important, he had spent
21 years learning about computers, wireless networking, and
22 in particular, computer hacking. He had taken a course
23 on computer hacking. He had numerous books and manuals
24 on computer hacking in his house. He even had a bumper
25 sticker on the mirror over his bed proudly proclaiming

1 that he was a hacker.

2 As you can see, some are on the screen,
3 photographs that were taken months after this incident.
4 Barry Ardolf's residence was searched in July of 2009.
5 And when his house was searched, you can see this is a
6 photograph of his bed. On the bookshelf above his bed
7 you can see a series of books.

8 And I will zoom in on a few of them, because
9 you can see that amongst those books are a series of
10 volumes on computer hacking. The art of intrusion,
11 intrusion is another name for hacking or exploits. In
12 the middle of that same stack of books, a book on
13 extreme exploits, the art of deception, a computer
14 hacking book. A book, tellingly, on wireless
15 networking. You will learn that that is an important
16 thing in the course of this case, his knowledge of
17 wireless routers and wireless networking devices. And
18 then finally, as shown on know the screen, a series of
19 books on computer hacking. This was in his bedroom.

20 And on, as I noted before, the mirror above
21 his bed, he even had a bumper sticker saying that he was
22 a computer hacker. Now, you will see that this bumper
23 sticker says, ethical hacker, certified ethical hacker.
24 That is how some of the manuals and the classes in this
25 area are labeled. And there are people who do

1 legitimate network security work, who will take hacking
2 courses to find out what is out there, what kind of
3 hacking is out there to be able to put up defenses.
4 But, there are also, as you will learn in this case,
5 many people who take these cases and use them for
6 illegal purposes. And what is clear, what became clear
7 months later when Barry Ardolf's house was searched, was
8 that Barry Ardolf knew a lot about computer hacking.

9 Now, you will learn that Barry Ardolf knew
10 about computer hacking from the classes he had taken,
11 from the manuals he had read, and that he also did
12 additional, very specific, research in order to get the
13 information that he needed to hack into the Kostolniks'
14 wireless router to get access to their computer system.
15 You will learn that the Kostolniks had what is called a
16 wireless router. And as we learned from the questioning
17 from Judge Frank today, many of you have wireless
18 routers at your house and are aware of how they work;
19 that they are used to connect wirelessly to the internet
20 using a laptop or an iPad or some other wireless device.

21 And as you will learn in this case, and
22 perhaps like some of you, the Kostolniks didn't know a
23 whole lot about the right way to protect their wireless
24 router. They had turned on the encryption function on
25 the wireless router, that is the thing that makes it say

1 you have to enter a password in order to connect up
2 wirelessly.

3 But, unfortunately, the option they used for
4 encrypting their wireless router was one of the options
5 available on the router they got from Qwest, was
6 something called WEP, W-E-P, encryption. And WEP, or
7 W-E-P stands for wired equivalent privacy, WEP.

8 It is, unfortunately, a very weak encryption
9 standard. The Kostolniks didn't know this, but that is
10 very well known in the hacking community that WEP
11 encryption is something that is easy to hack into. And
12 what the evidence at trial will show is that Barry
13 Ardolf knew this. And in February of 2009, he used his
14 knowledge, his very specific research, to crack the
15 encryption key that the Kostolniks used to password
16 protect their wireless router. And with this encryption
17 key, with this access to the wireless router, Barry
18 Ardolf was able to get access to the Kostolniks'
19 computers, and he was able to use the internet through
20 the wireless router.

21 And what that meant was when he did that and
22 went through their wireless router, and he used the
23 internet or sent e-mails through it or did anything
24 through it, it would look like that access was being
25 done by the Kostolniks through their own router. And

1 that, ladies and gentlemen, as you will learn, is
2 exactly why Barry Ardolf did that, why he hacked into
3 the router why he compromised it, why he got into the
4 Kostolniks' router.

5 How did he use that power? Well, first he
6 did some more research. And as you will learn at trial
7 his residence was searched in July of 2009. The FBI
8 searched it and found lots and lots and lots of detailed
9 notes that Barry Ardolf kept on his hacking of his
10 neighbors and all of the things that he was doing with
11 the information that he obtained.

12 He kept detailed notes on his computer. And
13 the FBI found them when they searched his house and
14 found multiple computers, external hard drives, thumb
15 drives, and data CDs and DVDs. You will see a lot of
16 these notes that he kept during the course of trial.

17 You will learn that in doing his research,
18 the Defendant learned that Matt Kostolnik was a lawyer
19 and that he worked at a law firm called Moss & Barnett.
20 This is a computer file you will see on the screen that
21 was found on a thumb drive in Barry Ardolf's bedroom
22 during that July 2009 search. And it was in a file that
23 he had named, I bet my CO2.txt -- do you see that in the
24 upper left-hand corner? I think I can -- you can see
25 that up there. And on here you can see again in the

1 upper left-hand corner of the file, which I will blow
2 up, that he had information on Matt Kostolnik, his work
3 telephone number which I have blacked out, his work
4 e-mail address, and also information on who was Matt
5 Kostolnik's legal assistant. And you will see that that
6 person's name is Brenda Murphy. I want you to remember
7 Brenda Murphy's name for the moment.

8 What did he do with this information? And we
9 have got to go back in time again to tell you what he
10 did with this. Because what you will learn is that a
11 few months before he completed the hack of the
12 Kostolniks' router in February of 2009, he created a
13 couple of things. He created a fake Yahoo.com e-mail
14 address in Matt Kostolnik's name,
15 MattKostolnik@Yahoo.com, and he created a fake
16 MySpace.com web page.

17 Now, you will learn that in order to create
18 these things, a Yahoo.com e-mail address, a MySpace
19 page, a gmail address, you don't need to be who you say
20 you are. You don't have to be Matt Kostolnik in order
21 to get Matt Kostolnik at Yahoo.com. And Google and
22 Yahoo and MySpace and do not make you prove you are who
23 you purport to be in order to get those things. You
24 just have to sign up for them.

25 But, what they do do is they keep records of

1 where these accounts are signed up for, and when they
2 were created.

3 And you will learn that these two accounts
4 right here, the MattKostolnik@yahoo.com e-mail account,
5 and then the Matt Kostolnik MySpace page were created,
6 both of them, on November 18th, 2008, from a public
7 library computer in Minnetonka, Minnesota.

8 You will also learn that when Barry Ardolf's
9 house was searched in July of 2009, he kept notes on
10 both of these accounts on his computer.

11 Let me show you one. This is again from a
12 file, a computer file recovered from a thumb drive from
13 Barry Ardolf's bedroom. And it is a file entitled
14 AlamoMattAllStuff.txt, and you will see a number of
15 these files during the course of the trial. You will
16 see how detailed he maintained these notes.

17 On here you can see there are notes relating
18 to him watching and almost doing surveillance of a
19 birthday party taking place at the Kostolniks' house,
20 reference to phone numbers, address, license number of
21 vehicles, of the cars. And the thing that I am focusing
22 on at the bottom and will blow up for your attention is
23 he had on here, MattKostolnik@Yahoo.com, a password,
24 "TheTrust12345" and as you can see, a security question
25 and answer to get access to that account at a later

1 time, information that you get at the time you are
2 creating that account.

3 Now, in another file also found in Barry
4 Ardolf's bedroom during the July 2009 search warrant,
5 this is a file entitled, MattMySpaceLogIn.txt. I will
6 click and blow up the center portion of it so you can
7 see that this is information related to that MySpace
8 account, the MySpace password. And you can see the
9 e-mail address he used to create the MySpace page was
10 that same MattKostolnik@Yahoo.com e-mail address.
11 Because you need, in order to set up a MySpace page,
12 MySpace has to be able to send you an e-mail with your
13 confirmation information on it, and that is what is
14 referenced in there.

15 So, what did Barry Ardolf do with this
16 information? What did he do with the fake e-mail and
17 the fake MySpace page? We will talk about the fake
18 e-mail address first. After he had hacked the
19 Kostolniks' wireless router, he used the router to send
20 e-mails from that Yahoo.com address, this address right
21 here. And you remember, I asked you to remember Brenda
22 Murphy's name, because he had done research, and we saw
23 the notes, the detailed notes that he kept, some of
24 which referenced Matt Kostolnik's legal assistant Brenda
25 Murphy. And he used that information to send an e-mail

1 with the Matt Kostolnik MySpace account. Excuse me,
2 MattKostolnik@Yahoo.com e-mail address.

3 I am putting up on the screen an e-mail that
4 was sent in the early morning hours of February 22nd,
5 2009 from the MattKostolnik@Yahoo.com e-mail address to
6 Brenda Murphy.

7 Subject line: You are such a fox.

8 I was thinking of you on Valentine's Day. I
9 wouldn't mind at all if you wanted to sneak me a kiss
10 when nobody is looking. Remember what Bill Clinton
11 finally fessed up to? I want that from you, signed
12 Matt.

13 This is going to Matt Kostolnik's legal
14 assistant, sent by Barry Ardolf.

15 Now, how do we know that it was sent by Barry
16 Ardolf? Well -- and I guess what I would want to back
17 up and tell you, that when this e-mail came in in
18 February of 2009, it came in on a Sunday. Brenda Murphy
19 came into work on Monday morning. She gets this e-mail,
20 reacts to it as you would expect her to react to it.
21 But, she thought it was out of character for Matt
22 Kostolnik, so she printed out the e-mail. She had
23 worked with him for several years before this time.

24 So, she printed out the e-mail. She walked
25 into his office. She put it on his desk and said: Do

1 we have something to talk about? She will tell you when
2 she testifies that Matt Kostolnik turned red, told
3 Brenda Murphy he had never sent the e-mail, and he had
4 never this e-mail address.

5 He also learned that later that morning that
6 Matt Kostolnik learned from the law firm's IT
7 Department, that two other lawyers at Moss & Barnett,
8 the law firm that he worked at had received e-mails from
9 the same Yahoo.com address. One of them went to Philip
10 Young. You will see that this one is related to the
11 Brenda Murphy e-mail.

12 It is from the MattKostolnik@Yahoo.com e-mail
13 address to Philip Young.

14 Hey, Phil, ask Brenda if she liks, l-i-k-s,
15 misspelled, me. And then it says, Philip, hey, Phil,
16 ask Brenda if she again, liks me, likes me, likes me,
17 because I like her. What can I say? I think she's
18 cute, Matt.

19 This is going to Philip Young who was another
20 lawyer at Moss & Barnett.

21 Now, again, I showed you some of the notes
22 that were found on Barry Ardolf's computer in his
23 bedroom during the July 2009 search. I will show you
24 one more, and this is found on that same text file we
25 had looked at before, the "IBetMyCO2.txt" file recovered

1 from his bedroom. And in this, at the bottom, I will
2 blow it up so it is easier to see, is the name of the
3 person who had the e-mail sent to them, Philip Young,
4 his e-mail address, YoungP@Moss-Barnett.com, and the
5 exact text of the subject line of that e-mail, including
6 l-i-k-s, that misspelling, that you can see if you
7 compare those notes to the e-mail that was sent to
8 Philip Young, also on February 22nd of 2009.

9 Now, so at this point in time he knows that
10 two e-mails have been sent to people at Moss & Barnett
11 and the IT Department informed him on that morning,
12 February 23rd, 2009 that yet another lawyer had received
13 an e-mail from the Yahoo.com address. And this one, as
14 you can see, went to a person by the name of Dave
15 Senger.

16 And it is from the MattKostolnik@Yahoo.com
17 e-mail address. And the subject line is, family pic
18 from Matt. It says, check it out, new family pic. I
19 was thinking you could appreciate these. Plausible
20 deniability, right? Matt K.

21 Now, as you learn in this trial Dave Senger
22 is the Chairman of the Management Committee at Moss &
23 Barnett. Matt Kostolnik was a relatively young attorney
24 at Moss & Barnett.

25 Dave Senger was the firm's top lawyer, the

1 Chairman of the Management Committee, sort of the top
2 guy at Moss & Barnett. And as you will learn -- let me
3 go back to some of these text files of the notes that
4 Barry Ardolf was keeping, he knew that. In fact, he
5 kept in his notes that the big guy at Moss & Barnett was
6 SengerD@Moss-Barnett.

7 Now, if we go back to the e-mail, you will
8 note that there are a couple of attachments that are on
9 this e-mail. And you will learn at trial that when Matt
10 Kostolnik was told about this e-mail by the IT
11 Department, the IT Department also said, there are two
12 photos attached to one of the e-mails, and they contain
13 pornographic material.

14 Matt Kostolnik saw the name of one of them.
15 It says, "Matts kids." And he became frantic. He was
16 wondering if somehow someone had a picture of his
17 children. He went down to the IT Department. He looked
18 at the picture, and he was sort of relieved it wasn't
19 his kids. But, not very relieved, because what it
20 turned out to be was a picture of child pornography.

21 Now, the picture was a picture of children
22 engaged in sex acts. I am going to show you on the
23 screen what is called a redacted version of the
24 attachment, meaning there is going to be a big black box
25 over a chunk of it. But, this, ladies and gentlemen,

1 shows the photograph that was attached to the e-mail
2 that was sent to Dave Senger in Matt Kostolnik's name on
3 February 22nd, 2009, by the Defendant Barry Ardolf. It
4 shows three real identified children engaged in sexual
5 contact.

6 Now, it is blacked out here. It is described
7 in the indictment. You will hear some testimony about
8 what is shown in there, because we have to meet the
9 elements of the offense, as the Judge described them to
10 you. And you will learn through that testimony that the
11 picture that was sent with the e-mail was a picture of
12 real children involved in sexual acts.

13 What you will also learn is that this was
14 sent in a February 22nd e-mail. When Barry Ardolf's
15 house was searched several months later on July 21st,
16 2009, this same picture was found on several computers
17 located in Barry Ardolf's bedroom.

18 As you can see on the left-hand side of the
19 picture as it was found on the attachment to the Dave
20 Senger e-mail, and what is shown on the right-hand side
21 are the five different places that same picture was
22 found on computers or computer media in Barry Ardolf's
23 bedroom when his house was searched in July of 2009.

24 Now, after the three e-mails came to the Moss
25 & Barnett employees in February of 2009, we didn't have

1 the benefit of what was found during the search warrant
2 several months later. So, I am showing you information
3 that law enforcement doesn't find out for a few months.

4 When you go back to February of 2009, Matt
5 Kostolnik, all he knows is that someone is sending
6 e-mails to his co-workers, his legal assistant, his
7 supervisor, in his name, some of them containing child
8 pornography.

9 Who sent them? Why? They are certainly not
10 the kind of things that anyone would want to have sent
11 to their assistant or their boss. So, he spoke to the
12 management of Moss & Barnett. It was obviously an area
13 of concern for the law firm. And he assured them that
14 he hadn't sent the e-mails.

15 He also reported the sending of the e-mails
16 to the Anoka County Sheriff's Department. He was put in
17 touch with Detective Pat O'Hara. Pat O'Hara is assigned
18 to the Internet Crimes Against Children Task Force at
19 the Anoka County Sheriff's Department. It is a unit
20 that investigates child exploitation crimes, child
21 pornography crimes using computers.

22 Shortly after getting involved in the
23 investigation, Detective O'Hara, as you will learn,
24 reached out to the FBI's Cybercrime Task Force. The
25 Cybercrime Task Force is the computer internet

1 investigation agency to which Agent Cameron and Agent
2 Howe are assigned. And relatively quickly when
3 Detective O'Hara started his investigation, he was able
4 to use something called an IP address, something you
5 will learn a little bit about and hear about at trial.

6 There was an IP address associated with the
7 e-mail. He was able to track that back and determine
8 pretty quickly that the three e-mails that had gone to
9 the Moss & Barnett employees in 2009 had come from the
10 Kostolniks' wireless router. So, what he realized is at
11 that point in time what Matt Kostolnik realizes is it
12 looks like it is him that is sending the e-mails. And
13 what Detective O'Hara had in front of him was either
14 Matt Kostolnik was sending those e-mails, or someone has
15 hacked into his router and is sending those e-mails.

16 A few days after Detective O'Hara got
17 involved in the investigation, he also was doing some
18 simple internet research and Googled Matt Kostolnik's
19 name. And by doing that, he discovered the fake MySpace
20 page that Barry Ardolf had created in Matt Kostolnik's
21 name.

22 And this, showing you on the screen a
23 printout of that MySpace page as it existed in April of
24 2009, but it was also the same one Detective O'Hara
25 would have seen early in March of 2009.

1 Now, if you look at that MySpace page, I will
2 blow this up a little bit, you will see there is a
3 photograph on there, and it is mostly blacked out
4 because I have redacted the bottom portion of it again.
5 But, as you will learn at trial, that picture right
6 there is the same image of child pornography that had
7 been attached to the e-mail sent to Dave Senger on
8 February 22nd, 2009.

9 The only difference is that the redaction on
10 the bottom, that black portion, is something I put on
11 there to present as a court exhibit. But, this image
12 had some kind of unique squiggly lines, if you see, it's
13 kind of white squiggly lines on the faces of the two
14 boys. So, that was the same image sent to Dave Senger,
15 but with the boys' faces obscured.

16 And what you learn, again, is that a few
17 months later when Barry Ardolf's house was searched in
18 July of 2009, you see that is the image that was posted
19 on the MySpace page on the left. Three instances of
20 that same image with the same squiggly lines over the
21 faces of the boys were found on computers in Barry
22 Ardolf's bedroom.

23 Now, if we go back to the MySpace page, you
24 will also note that on MySpace pages, you can put a
25 little description of yourself on it, and there was a

1 description on this MySpace page that I am going to blow
2 up. And it says, Matt's blurbs, and there is a section
3 on there that is about me. It says, I bet my co-worker
4 that since I am a lawyer and a darn great one that I
5 could get away with putting up porn on my site here. I
6 bet that all I have to do is say there is a plausible
7 deniability, since anybody could have put this on my
8 site, like someone hacked my page and added this porn
9 without my knowledge. This is a reasonable doubt. I'm
10 a damn good lawyer. And I can get away with doing
11 anything. Lawyers rule the world. I am part of such a
12 big firm that I will have unlimited resources to get off
13 scot free, even though most of the people in my firm,
14 law office, are assholes, I know they will support it.
15 So, that was on that same MySpace page.

16 Now, I want to take you a few months into the
17 future when a search warrant is done on Barry Ardolf's
18 house, and the same "IBetMyC02.txt" text file, you will
19 see that the same language that was in the "About Me"
20 section of the MySpace page was found in the notes kept
21 by Barry Ardolf of what he was doing. If you compare
22 the two, you will learn, as the evidence will show at
23 trial, it is the exact same language.

24 Again, the FBI only found this evidence in
25 July of 2009. And back in February and March of 2009,

1 neither Matt Kostolnik nor Detective O'Hara knew who had
2 sent the e-mails or set up the MySpace page.

3 And shortly after those e-mails got sent in
4 February of 2009 with the e-mail address that was
5 supposedly in Matt Kostolnik's name, two other lawyers
6 at Moss & Barnett received a strange e-mail again
7 related to Matt Kostolnik.

8 And I am going to put this up on the screen.
9 This is an e-mail that was received by Joseph
10 Maternowski and Anthony Dorland on March 8th of 2009 --
11 actually, probably received by them the following Monday
12 when they came into their office. And it purports to be
13 by a person by the name of Mary Sill. And as you can
14 see, it claims to be Mary Sill, a person who was at the
15 Wxxxxxxx Mitchell College of Law on March 6th, and that
16 she was assaulted by Matt Kostolnik. That is what this
17 e-mail is purporting to tell the two lawyers from Moss &
18 Barnett, Joe Maternowski and Anthony Dorland, and it is
19 signed Mary Sill from Wayzata, Minnesota.

20 You will learn during the course of trial,
21 ladies and gentlemen, that Mary Sill is a real person, a
22 real person who lives in Wayzata, Minnesota. And you
23 will hear her testify. I will blow that up a little bit
24 so you can see it better.

25 You will hear her testify that she did not

1 write this e-mail. That she was not at Wxxxxxxx Mitchell
2 Law School on March 6th, 2009, that she has never met
3 Matt Kostolnik; that this incident in this e-mail did
4 not occur; and that this is not her e-mail address. And
5 she never gave anyone permission to create a fake e-mail
6 address in her name.

7 And ladies and gentlemen, remember a little
8 earlier, I told you that the person identified in the
9 indictment is Victim A, I told you who that was. And
10 you will learn that the person identified in the
11 indictment as Victim B is Mary Sill, the person who
12 Barry Ardolf used her identity to create the false
13 e-mail address to send that e-mail to the attorneys at
14 Moss & Barnett. It is her identity that is charged with
15 being stolen in Count 3 of the indictment.

16 How do we know Barry Ardolf sent this e-mail?
17 Well, again, in July of 2009, more files were found.
18 This one is from a file found in Barry Ardolf's bedroom
19 called, "March 6th." And on here, as you can see in the
20 center of it, is the name Mary Sill, Mary Sill's
21 telephone number. I blacked out the last four digits,
22 but that is in fact Mary Sill's telephone number.
23 Wayzata, Minnesota, Mary Sill's 2008 gmail.com e-mail
24 address, the password for that e-mail address and then
25 the security question for that e-mail account. And as

1 you can see at the bottom of that same file as I blow it
2 up, you had in those same notes the names and the e-mail
3 addresses of the two lawyers at Moss & Barnett, Joe
4 Maternowski and Anthony Dorland who he sent the e-mail
5 to.

6 Later, you can go on to the same file and you
7 can see at the bottom of it, again, is Mary Sill's name.
8 And in the section right here that I am blowing up is
9 the precise text that is contained in that March 8
10 e-mail, written in the name of Mary Sill to Anthony
11 Dorland and Joe Maternowski, on a file found when Barry
12 Ardolf's bedroom was searched in July of 2009. And
13 again, you can compare the text of the two and see that
14 it is the same as the e-mail that was sent.

15 Now, again, law enforcement didn't have this
16 information that was in the files that they found in
17 July of 2009 until after the search of Barry Ardolf's
18 house. And going back to when this e-mail was sent in
19 March of 2009, neither Matt Kostolnik nor Detective
20 O'Hara, or anyone from the Cybercrime Task Force knew
21 who was sending the e-mails.

22 And in fact, after this e-mail was sent, Matt
23 Kostolnik got pulled in front of his supervisors at work
24 and got grilled about, where were you on March 6th?
25 Were you at Wxxxxxxx Mitchell College of Law? Wanting to

1 find out if this was a real e-mail. At first Matt
2 Kostolnik couldn't remember where he was. And finally
3 he said, I was in court that day. And as it turns out
4 on March 6th of 2009, Matt Kostolnik was actually in the
5 Federal Courthouse in Minneapolis arguing a case in
6 front of Judge Joan Ericksen.

7 And it was after that meeting that the law
8 firm decided they should hire an outside investigator to
9 find out what was going on. The firm hired an outside
10 law firm, and that law firm hired an outside computer
11 forensic investigator named Scott Johnson. Scott
12 Johnson went to Matt Kostolnik's house, looked through
13 Matt Kostolnik's computer to see if there were any
14 viruses on it or anything like that that could be
15 causing a problem, looked for words related to the
16 e-mails that had been sent out. Didn't find anything,
17 but he did determine by looking through the logs of the
18 wireless router that a device that was not a device
19 under the Kostolniks had been on the wireless router.
20 So, he installed what is called a packet capture device
21 on the wireless router, basically something that gathers
22 up all of the packets of information, all of the data
23 that runs through a wireless router when it is
24 connecting up with the internet, information going to
25 the internet, information coming back from it over time.

1 And the purpose of this was to determine
2 whether somebody else, besides the Kostolnik family was
3 using the router. And shortly after the packet capture
4 device was installed and during this time period, Mike
5 Kostolnik is at work. And he is told by the
6 receptionist at work that he has some visitors, and he
7 learns that there are two agents from the United States
8 Secret Service investigating a death threat e-mail to
9 the Vice-President sent in his name.

10 So, you may know the United States Secret
11 Service, one of the things they do is protect the
12 president and other public officials, the people in the
13 black suits and the dark sunglasses who you see around
14 the President at public events. The Secret Service also
15 investigates death threats to the President and other
16 public officials. And you will learn about that through
17 the course of trial.

18 And you will learn that at the beginning of
19 April of 2009, that two agents from the United States
20 Secret Service came to talk to Matt Kostolnik about this
21 e-mail that was sent out on Wednesday, April 1st, 2009.
22 And you can see that the sender of that e-mail purported
23 to be MattBethanyKostolnik2009@Yahoo.com. And the
24 recipient of that e-mail, or at least one of the
25 recipients of that e-mail was the Vice-President at

1 WhiteHouse.gov.

2 What did the e-mail say? I will blow up some
3 of the portions of it. It said: This is a terrorist
4 threat. Take this seriously. Time for a new government
5 officials after a year all are put to death by us. I'll
6 kill you all one at a time or a bunch at a time. I
7 swear to God I will kill you guys. You guys better
8 start watching your back, Matt and Bethany.

9 When the Secret Service agents asked about
10 the e-mail Matt Kostolnik said he didn't send it, his
11 wife hadn't sent it. And he instead told the Secret
12 Service agents about the other e-mails that had been
13 sent and said I have reported this to the Anoka County
14 Sheriff's Office and the FBI is working on it and that
15 his firm was conducting an outside investigation into
16 who was sending the e-mails.

17 So now, at this point in time, the Secret
18 Service becomes involved in the investigation. And over
19 the next months, at least, two more threat e-mails are
20 sent with approximately the same type of message as the
21 one that is in this e-mail that went out on April 1st.
22 So, who sent these e-mails? Well, again, we have to
23 look at evidence that was recovered from Barry Ardolf's
24 house several months after April 1st.

25 This was from a computer file found in Barry

1 Ardolf's bedroom that is titled, "MattNiks-2.txt" and
2 recovered from his bedroom. And as you can see at the
3 bottom of that text file that is shown on the screen,
4 and I will blow up that portion, it has got the
5 MattBethanyKostolnik2009Yahoo.com e-mail address, the
6 password, security question, and other information
7 reportedly related to the Kostolniks.

8 A little later on in that file, I will blow
9 that portion of it up. The FBI when they searched the
10 computer found this, which is the text of that e-mail
11 threat to the Vice-President of the United States. And
12 if we blow up the bottom, it also has the e-mail
13 addresses of the various public officials that Barry
14 Ardolf sent this e-mail to.

15 Now, what else was found on the computer
16 files recovered from Barry Ardolf's bedroom is what is
17 called a -- it really could be called a trophy shot. It
18 is a screen shot saved in a computer file format, saved
19 as "Some Sent May 6th.jpeg." JPEG is a file extension
20 for an image, for a computer image file. So, Barry
21 Ardolf took a screen shot of what was on the screen.
22 And what we see is the sent e-mail box of the
23 MattBethanyKostolnik2009@Yahoo.com e-mail address.

24 And if you look on here, and am taking an
25 arrow and I will blow that up, the last of the e-mails

1 shown as being sent to Vice-President@WhiteHouse.gov was
2 sent on May 6th 2009.

3 It was this last e-mail that was sent out,
4 and sort of the persistence of Barry Ardolf in doing
5 different things to try to harm his neighbors that
6 proved to be his downfall. Up to this point, he had
7 done an extremely good job of covering his tracks, of
8 creating fake e-mail addresses, of hacking into a
9 wireless router, doing things to get around being caught
10 to the point where Detective O'Hara of the Cybercrime
11 Task Force wasn't able to figure out who was the one
12 that was sending the e-mails.

13 But, he had used a lot of the tricks that he
14 had learned from his studies to be able to do that.
15 But, when he sent this e-mail, that packet capture
16 device, the device that was attached to the wireless
17 router to collect data collected a couple of things.
18 First of all, it collected the text of the threat e-mail
19 that went out on May 6th, and around it, on the same
20 device ID of the computer that sent this e-mail, it
21 found information related to Barry Ardolf's name and
22 Barry Ardolf's Comcast internet account, indicating that
23 Barry Ardolf was using the Kostolniks' router to be able
24 to send this e-mail. And it was this information
25 combined with a lot of other information developed over

1 the course of the investigation that gave law
2 enforcement enough to get a search warrant to search
3 Barry Ardolf's house. And at this point in time the
4 investigation was being headed up by the FBI Cybercrime
5 Task Force. And Special Agent Cameron obtained a search
6 warrant and put together a team of law enforcement
7 agents from a number of different agencies to conduct a
8 search of Barry Ardolf's house, people from the FBI, the
9 U.S. Secret Service, the Blaine Police Department and
10 the Anoka County Sheriff's Office, a number of people
11 went out and executed a search warrant on Barry Ardolf's
12 residence on July 21st, 2009.

13 Now, prior to going out there, Agent Cameron
14 determined that there was reason to believe that there
15 might be a number of computers at Barry Ardolf's
16 residence. And so as part of the search warrant team
17 going out to do the search warrant, the FBI's Forensic
18 CART Unit, headed by Special Agent Jerry DeWees, who is
19 a veteran of the Cybercrime Squad, who went out to
20 oversee the search warrants of the computer devices at
21 Barry Ardolf's house.

22 So, on July 21st, 2009, the search warrant
23 team went to Barry Ardolf's residence. When they
24 arrived they found Barry Ardolf in his yard. They
25 explained why they were there, walked up to his house,

1 and he let them into the house.

2 And when they went in, they found all kinds
3 of computers, computer monitors, computer hard drives,
4 and massive amounts of storage media. Here are just a
5 few pictures of some of the things that were found in
6 the course of the house search.

7 These, as I am starting right here, are just
8 some pictures from his bedroom. A number of the discs
9 that were found, I think I talked about before that
10 there were computers, there were computer storage
11 devices, loose hard drives, CDs, DVDs. And a number of
12 the CDs and DVDs that contained data contained hacking
13 software programs on them.

14 I will show you one of them. This is a CD
15 that was recovered from Barry Ardolf's bedroom and it
16 was labeled, real hacking software Munga Bunga, which
17 contained multiple hacking software.

18 Also, this is one of a number of CDs that
19 were recovered from Barry Ardolf's house containing, and
20 it says, BackTrack 3 on it, containing a suite of
21 software programs used in hacking wireless routers
22 called BackTrack. And this is BackTrack Version 3 that
23 is shown here.

24 And during the course of the investigation,
25 agents found not only this, but other items relevant to

1 their investigation, including printouts of wireless
2 access points in the neighborhood, manuals on hacking,
3 some of which we saw pictures of earlier, notes related
4 to Barry Ardolf's hacking of the Kostolniks' wireless
5 router, including the encryption key and his accessing
6 of the password to get access to the wireless router,
7 and even open pieces of mail addressed to Matt Kostolnik
8 under Barry Ardolf's bed. And I have blacked out those
9 two black portions on there, the things that I have
10 affixed. Those are, as you can see, a Blue Cross Blue
11 Shield statement that was mailed to the Kostolniks.
12 This and several other pieces of opened mail addressed
13 to the Kostolnik family were found under Barry Ardolf's
14 bed.

15 During the course of the search warrant in
16 July of 2009, Barry Ardolf was interviewed by both
17 Special Agent Cameron and Special Agent Eric Humbert of
18 the United States Secret Service. And when he was
19 interviewed by Agent Cameron, he claimed not to know
20 much about computers. He was asked about the framed
21 hacking certificate. You will see a picture of that
22 during the course of the trial that he had on his
23 bedroom wall, indicated that he completed training in
24 hacking. He claimed that he couldn't remember any of
25 the specifics from that training.

1 And when he asked if he was familiar with the
2 hacking software BackTrack, he claimed that he was not.
3 But, of course, FBI agents still finding a bunch of
4 these discs with BackTrack written on them.

5 And when they came up to him and said, they
6 showed him the CD with BackTrack on it that was found in
7 his bedroom, he acknowledged that it was his
8 handwriting, but stated that someone had given him a
9 copy, and he had not used it.

10 Similarly, when he was asked about the mail
11 from the Kostolnik family that was found under his bed,
12 he claimed not to know anything about that.

13 And after Agent Cameron was finished speaking
14 with the Defendant, he was interviewed by Special Agent
15 Humbert from the Secret Service. And Agent Humbert
16 explained that the purpose of the Secret Service being
17 involved in the investigation were the threat e-mails to
18 the Vice-President. And he asked Barry Ardolf whether
19 he wanted to do harm to the Vice-President, whether they
20 should be concerned about him doing harm to the
21 Vice-President. Barry Ardolf said, no, no, no, he was
22 happy with both the President and the Vice-President.
23 And so Agent Humbert read one of those threat e-mails
24 out loud and said: Well, if you like the
25 Vice-President, then why would you make a death threat

1 against him? To which Barry Ardolf responded: Maybe I
2 was mad at my neighbor.

3 Later, after the search warrant was conducted
4 of the house, there was a forensic examination conducted
5 on a number of different computers that were recovered
6 from the residence. And as I discussed, the FBI found
7 file after file of detailed notes on the hacking of the
8 Kostolniks' router done by Barry Ardolf. I have shown
9 you just a small portion of the ones that were found
10 during the course of the search. As well as e-mails,
11 the e-mails that he sent to the co-workers and the
12 Vice-President, notes related to the MySpace page, and
13 again some of them I have shown you during the course of
14 this opening statement. You are going to see more of
15 those over the course of the next several days.

16 Now, ladies and gentlemen, although you are
17 going to hear testimony and get some evidence on some
18 rather complicated hacking that was done by the
19 Defendant, you are going to hear some technical
20 information as a part of that testimony. I want you to
21 focus on the heart of the case, because the heart of
22 this case is not a complicated case. There is going to
23 be some technical testimony, but this case is about a
24 dangerous man, a person who got mad at his neighbors and
25 decided that because he got mad at his neighbors, he was

1 going to use his technical knowledge, knowledge that he
2 had acquired to terrorize them and to do what he could
3 to destroy their lives.

4 I have given you an overview of what you are
5 going to learn over the next few days about what the
6 evidence will show. And ladies and gentlemen, at the
7 end of this trial, the evidence, as you will hear over
8 the next few days, will show beyond a reasonable doubt
9 that the Defendant Barry Ardolf committed the crimes
10 charged in the indictment.

11 And after you have heard all of the evidence,
12 I am going to come back here and I will ask that you
13 look at the evidence and apply the law as the Judge
14 gives it to you and return verdicts of guilty on all
15 counts charged in the indictment. Thank you very much.

16 THE COURT: Mr. Mahoney, do you wish to
17 reserve your right to present your opening remarks at
18 the end of the Governments's case?

19 MR. MAHONEY: Yes, Your Honor.

20 THE COURT: Members of the jury, it is my
21 responsibility, with input from counsel, to always look
22 for a logical place that minimizes disruption of the
23 case, that is fair to your time schedule, and logical in
24 the presentation of things.

25 And what I am going to do is we are going to

1 recess at this time, rather than begin the testimony,
2 since it is nearly 4:30. You had a longer day than
3 usual, just because of how we begin jury selection in
4 the morning. So, we are going to stand in recess.

5 And ordinarily, I would say we will begin at
6 9:00. We will begin at 9:30 in the morning. You can
7 come in as early as you like. And we will have the
8 coffee on, not that everybody is coffee drinkers, but we
9 will have that on if you need something. There will be
10 somebody in my chambers.

11 The 9:30 start is for two primary reasons.
12 One, it will give me -- the least important reason is if
13 I need any extra time to chat with on our time, not your
14 time, with counsel. But more importantly, even though I
15 think the weather forecast ranges, depending on where
16 one is coming from, anywhere from one to six inches of
17 snow, somewhere in that regard, give people a little bit
18 of breathing room, because I am confident I can keep us
19 on track and be fair to you and be fair to both of the
20 parties. So, we will begin at 9:30. The courthouse
21 opens at 7:00. You can come in when you like.

22 In the unlikely event -- or if you would
23 forget your passkey, you can buzz my chambers. It is
24 out in the hallway up here, and somebody can let you in,
25 in that event, if you forget your pass card.

1 When you go home this evening, wherever you
2 may go, you can, of course, tell people where you have
3 been, what you are doing. You are a juror on the case.
4 You can say the name of the case. You can say what the
5 charges are, and that the Defendant denies the charges.
6 That is all you should say.

7 And you and I all know people, because it is
8 easy to say to you, you can't investigate and ask
9 questions of people, and I have talked about the
10 internet and the media issue, but we all are friends
11 with people, and maybe even have family members where
12 without asking a question, you can just say the right
13 thing and they will just start talking and tell you
14 probably what you are trying to seek to find out so you
15 can actually say, well, I didn't ask anybody a question.

16 Well, it is your responsibility as a juror,
17 going back to that very important principle of what
18 should happen in this case, no matter what your verdicts
19 may be, should be based upon what goes on in here.

20 You also have a responsibility not only not
21 to do investigation or ask questions, but also to
22 interrupt somebody and say, look it. I am on a case.
23 This is the name of the case. This is what we are
24 hearing, but I can't talk about it or let you ask me
25 questions or give me your opinions on whatever issues

1 you perceive as relevant to the case.

2 So, perhaps enough said, in the unlikely
3 event you get exposed to some information, or someone
4 tries to talk to you, then I would like to know about it
5 promptly in the morning. I hope you have a nice
6 evening. Safe travels.

7 I thank you for your full attention and
8 patience today and we stand in recess until 9:30
9 tomorrow morning. You can leave your -- I wouldn't
10 leave the three-ring books out here, although they would
11 be safe here. You can just leave them on your table in
12 the jury deliberation room. We are in recess.

13 (Jury excused.)

14 THE COURT: If I may, Counsel? I admittedly
15 didn't give you input into the 9:30 start. Two things.
16 One, Mr. Mahoney they will have your client -- they will
17 pick your client -- I am still waiting to hear, in
18 between the Marshal Service -- and this is about,
19 currently, about tomorrow morning. I know the way
20 tomorrow morning is going to be handled, and that
21 explains another reason that I didn't explain to the
22 jury, for the 9:30, although I think the weather is
23 reason enough. But your client will be picked up at
24 7:30 tomorrow morning by the Marshal Service and will
25 be -- I will ask that he be brought to the courtroom, or

1 it can be the courtroom next door, as well. It won't be
2 open to the public. The purpose of that is for you to
3 consult with each other. So, whether it is here -- I
4 can arrange a spot at 8:00 -- so, he can be in the
5 courtroom no later than 8:00 in the morning. So that
6 would give you an hour and a half. There is 90 minutes
7 there.

8 I believe that there may be an issue about
9 staying significantly after tonight, and I am getting
10 that information as we speak. We will have it in the
11 next couple of minutes. And also, trying to make
12 arrangements at Ramsey County, and you say, well, what
13 arrangements? Because I don't view a glass pane as
14 acceptable between a lawyer and a client. The jail has
15 their job to do, but -- so, I am waiting for that
16 information now.

17 So, we know at a minimum we have the 8:00 to
18 9:30 in the morning, rather than just 8:00 to 9:00. And
19 then I will likely set that up and communicate with the
20 Marshal Service so that you can have your private
21 access, and yet the Government can go about their
22 business.

23 I will probably set it up in the courtroom
24 next door. And it won't be open to the public. Who you
25 want here is, then, as long as the Marshal -- I assume

1 it is going to be you and your client, Mr. Mahoney?

2 MR. MAHONEY: Yes, sir.

3 THE COURT: So, we have got that set up for
4 tomorrow morning. We can probably recreate that each
5 day. What I am waiting to hear from is to -- there is
6 communication going on. I had gotten a message on the
7 instant message between the Marshal Service and Ramsey
8 County and we will get that figured out. I am not
9 saying everybody is going to be happy or in agreement.
10 I want to determine that, currently, and then I will
11 give you the message. Because I don't know where you
12 are at. I am just assuming you are saying, well, even
13 with 90 minutes tomorrow morning, to begin with, I will
14 take as much time as I can get this evening. We are
15 working on that right now. So, I will get that
16 information to you shortly. That is where Ms. Schaffer
17 just went, so --

18 MR. MAHONEY: Your Honor, if I might just on
19 that? Once he is back in Ramsey County, the problem
20 yesterday was the booking in process.

21 THE COURT: Exactly.

22 MR. MAHONEY: Once he is booked in, we can
23 share a space together and speak.

24 THE COURT: We will see, because that is not
25 true in all of the jails. That is the problem. That

1 varies dramatically. So, we are going to get the
2 information on that and get that set up, because we are
3 not going to have a repeat of what happened -- it may be
4 nobody's particular fault. There may have been some
5 protocol -- unfortunately, I learned about it at 9:00
6 this morning as we were in the courtroom, so did most of
7 my staff. And obviously, it is beyond the control of
8 Mr. Rank. And so I am not suggesting -- I mean, so we
9 have got tomorrow morning set up. So, I think that is a
10 good start and we are just waiting --

11 THE CLERK: I am going to go call now.

12 THE COURT: We are waiting on the information
13 now. So, we will get that information to see, well, if
14 that is the situation -- but we are getting that
15 shortly. Because there has been some communication
16 going on.

17 MR. MAHONEY: Well, Your Honor, I mean, I can
18 just have a few minutes with him as they are closing the
19 courthouse at five. I can be at the jail later this
20 evening, that is fine. We don't need to keep everybody
21 here. So, I am not too worried --

22 THE COURT: But I think what I promised I
23 would do is find out the arrangements at Ramsey County.
24 And I am assuming there is not going to be an issue, but
25 I just want to be able to verify that, so I can

1 represent that to everybody so that everybody knows
2 exactly what is going on, so I don't receive a surprise.
3 Again, perhaps best known protocol, I don't know that.
4 But, I just wanted to make sure that I get the
5 information so that if there is something that I can do,
6 that I can intervene in some appropriate way.

7 MR. MAHONEY: Appreciate that.

8 THE COURT: Is there -- for the Deputy
9 Marshals in the room, can he have a few minutes with his
10 client right now until we get this information on Ramsey
11 County?

12 THE MARSHAL: Yes. We can give him until
13 five, at least.

14 THE COURT: And then I will have the
15 information before five.

16 And what I will probably do, this is more for
17 the Defense Counsel and the Marshal Service. Let's just
18 plan to set up tomorrow morning next door. That is an
19 empty courtroom, and there might be others, too. But, I
20 know that one is. So that way whoever is working in
21 here, or if it is opened up for any reason, that won't
22 interfere with anyone?

23 All right, so we will get back to you on that
24 issue. And we will stand in recess -- we agreed to,
25 unless somebody gets a message to me -- I do have the

1 one instruction I will send with each of you that I
2 don't think -- it won't come up tomorrow, maybe it will.
3 It is not given in writing, but what I refer to as that
4 404(b) cautionary instruction customized for this case.
5 I said I would have that for you. I have got that here.
6 And I will send that to you this evening. I have one
7 copy, actually two for -- well, I have got four, two for
8 each of you. I will send that with you.

9 And then I have nothing further. And then if
10 you need -- I will come shortly before 9:30 to the -- I
11 will be in chambers probably by 7:00, but if somebody
12 needs access to me for an issue, I will take it up
13 before 9:30, then send a message to the jury that well,
14 you are ready to go, but the Judge is going to meet with
15 counsel. So, I will be available if needed.

16 Anything further on behalf of -- you can
17 leave things in here. We can lock it down shortly. Or,
18 if you are going to leave things, Mr. Mahoney, in the
19 attorney conference room, since it is outside of the
20 security barrier, we have already made arrangements. We
21 will have the CSO lock that down for you.

22 I don't have any court scheduled. Sometimes
23 I do before 9:30, or I would move it to another
24 courtroom. You could have access here as need be. And
25 we will convene with the first witness at 9:30 in the

1 morning.

2 Anything further from the Government?

3 MR. RANK: No, Your Honor.

4 THE COURT: Or from the Defense?

5 MR. MAHONEY: No, Your Honor.

6 THE COURT: We are adjourned.

7 (Evening recess.)

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12 Certified by: s/ Jeanne M. Anderson

13 Jeanne M. Anderson, RMR-RPR
14 Official Court Reporter

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